IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.687 OF 2006

Yashwant V. Padale ...Appellant

v/s

Chandrakant D. Padale and ors. ...Respondents

Mr P.B. Shah for Appellant.

Mr V.S. Gokhale for Respondent Nos.1 to 3 and 5 to 7.

WITH

SECOND APPEAL NO.686 OF 2006

Yashwant V. Padale ...Appellant

v/s

Dattatraya W. Padale and ors. ...Respondents

Mr P.B. Shah for Appellant.

Mr V.S. Gokhale for Respondent Nos.1 to 10.

CORAM : D.K. DESHMUKH J.

DATE : 27TH JULY 2006.

P.C. :-

1. Parties to both the appeals are same, subject matter of both the appeals is the same. Therefore, both the appeals are disposed off by a common order. The case of appellant - Yashwant is that the suit land was the property of deceased Dinkar, that his adopted son Chandrakant entered into an agreement to sell this land in his favour and also delivered possession to him. Therefore, he filed a suit for specific performance of the agreement for sale. The civil suit was filed by Chandrakant for a declaration that the agreement for sale is invalid and also for decree of possession. As a result of the judgments which are impugned in these appeals, the agreement of sale has been declared as invalid and it has been held that Yashwant is not in possession of the land and therefore Yashwant has been restrained from disturbing possession of Chandrakant of the suit land. Admitted facts are that Dinkar was the sole owner of the property, his wife had died during his life time, he had one daughter by name Shevantabai, she is already married. Dinkar had adopted Chandrakant. After the death of Dinkar, admittedly during the

minority of Chandrakant, according to Yashwant, an agreement to sell the land was executed in favour of Yashwant on 20th April 1981. Chandrakant was adopted son of Dinkar, thumb impression of natural mother of Chandrakant was obtained on the agreement of sale. On the basis of these admitted facts, a finding has been recorded that as adoptive mother and adoptive father of Chandrakant were no more, without getting a guardian appointed for him, no document in relation to the property owned by him could have been executed by anybody and therefore, the agreement of sale which is supposed to be signed by natural mother of Chandrakant is invalid. Not only that there is no illegality in this finding but the finding is absolutely in accordance with law. So far as the aspect of possession is concerned, Yashwant claims that possession was delivered to him pursuant to the agreement of sale. If the agreement of sale was invalid, Yashwant could not have got valid possession of the property and therefore, in my opinion, the Court was justified in declining to protect possession and holding that Chandrakant continued to be in possession of the property. From the admitted facts it is clear that in any case Chandrakant was not the sole owner of the property because Dinkar had left behind him one more heir viz. a married daughter. Admittedly, she is not party to any agreement of sale, therefore, no fault can be found with the order

of the Court declining to make any decree of specific performance in favour of Yashwant.

2. As per provisions of section 7 of the Hindu Minority and Guardianship Act, the natural guardianship of an adopted son who is a minor passes on adoption to the adoptive father and after him to the adoptive mother. Section 11 of the said Act lays down that after commencement of the Act, no person shall be entitled to dispose off or deal with the property of the Hindu minor merely on the ground of he is defacto guardian. Therefore, even if it is assumed that the natural mother of Chandrakant was his defacto guardian, still she will not have any right to deal with the property of Chandrakant. Taking overall view of the matter therefore, it is clear that the orders impugned in these appeals are perfectly justified. Appeals are rejected. Civil application No. 1014 of 2006 in second appeal No.687 of 2006 and civil application No.1013 of 2006 in second appeal No.686 of 2006 are disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.